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TAX COMMISSIONER

# Property Tax Newsletter

November 2002

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## Interim Taxation Committee Met in September

The interim meeting of the Taxation Committee of the North Dakota Legislature met Sept. 25, 2002, to consider the impact of adjusting the capitalization rate in the formula for valuing agricultural land, the fiscal analysis of the subsidized housing property tax exemption, special assessments, and the income qualification for the property tax credit.

The Committee considered a bill draft pertaining to the agricultural land valuation formula. The capitalization rate and government payments, including disaster assistance payments, have been significant influences on recent valuation increases. Statistics were presented indicating the shifts in property tax burden if a minimum capitalization rate is instituted or if the capitalization rate increases from 8.5 to 9.5 percent yielding a decrease in agricultural property valuation statewide of 10.5 percent. The Committee approved a bill draft providing that the capitalization rate is the sum of the effective tax rate and a 10 yr. average of the gross Agribank mortgage rate of interest and that the use of the effective tax rate will be phased in over a period of four years in equal installments.

After considering testimony, the Committee did not approve a bill draft to provide a partial property tax exemption for certain kinds of subsidized housing.

The Committee reviewed five bill drafts pertaining to special assessments; however,

only two were forwarded to the Legislative Council. They pertain to city flood control special assessment application to certain structures on state land, and special assessment project cost estimates.

North Dakota Century Code § 57-02-08.1 limits the availability of homestead credit to applicants with income of \$14,000 or less and does not distinguish between income of single and married persons. The Committee reviewed and approved a bill draft relating to eligibility for the homestead property tax credit using the federal poverty level as a basis for income limitations. The 2002 federal poverty level was \$8,860 for a single person and \$11,940 for a couple. The bill draft lists the income and reduction specifications as follows:

Formula: If **Income** = or < % of **Poverty Level**, applicant is eligible for % **reduction** up to **maximum amount of true & full value**. See below:

Income: % of				
Poverty Level	Poverty Level \$ (Single)	Poverty Level \$ (Couple)	Total % Reduced	Total T & F Reduced
100%	\$8,860	\$11,940	100%	\$80,000
110%	9,746	13,134	80%	64,000
120%	10,632	14,328	60%	48,000
130%	11,518	15,522	40%	32,000
140%	12,404	16,716	20%	16,000

Applicants for the renter's refund use the same income levels as for the homeowner's property tax credit, based on the federal poverty level, with a maximum refund of \$240 for an applicant whose income is at or below the poverty level and a maximum refund of \$48 for an applicant whose income is between 130% and 140% of the poverty level. ●

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## Use of Applications For Property Tax Exemption

North Dakota Century Code (N.D.C.C.) § 57-02-03 provides that “[a]ll property in this state is subject to taxation unless expressly exempted by law.” Therefore, assessment officials, including governing boards, must consider all real property as taxable. It is the responsibility of property owners to provide evidence to assessors to support their claim for exemption.

Within the boundaries of cities, real property owned by any person, corporation, company, association or organization must have an application for property tax exemption filed with the assessor *each year* to show why the property is eligible for exemption (N.D.C.C. § 57-02-14.1). Property owned by any school or political subdivision does not require application for exemption. A copy of the form titled “Application For Property Tax Exemption” is included in Section 3 of the Assessor’s Manual and is available from the Property Tax Division of the Office of State Tax Commissioner. Assessors should include a copy of approved applications when they submit the assessment book to the city auditor before April 1.

For property located outside of municipalities, owners are not required to file an application for exemption with the township assessors to claim exemption. However, in order to determine whether a residence qualifies as a farm residence according to N.D.C.C. § 57-02-08(15), assessors need to know all of the facts: whether the residence is located on a tract of agricultural land consisting of

at least 10 acres and used as part of a farm plant by an individual residing in it as a farmer defined in that statute. The best way to determine the facts of each situation and treat all rural residential property occupants equitably is to use the form titled “Application For Property Tax Exemption of a Farm Residence.” One of the qualifications for the exemption pertains to farm income. The statute specifies that to qualify as an active farmer, the individual (and spouse, if married) must have received at least 50 percent or more of annual net income from farming activities during any of the three preceding calendar years. To qualify as a beginning farmer, the individual must have begun occupancy and operation of a farm within the three preceding calendar years, devote the majority of time to farming activities and not have a history of farm income for each of the three preceding calendar years.

Assessment officials need to verify the facts of each situation every year. One year’s income drops off and the income for the year added may disqualify the individual from the exemption. 🌱

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## Finalization of 2002 Assessments

County auditors have received official certification of the 2002 assessments as equalized by the State Board of Equalization. There were a number of individuals who appealed their assessments. Governor Hoeven emphasized that local and county boards of equalization should resolve individual property assessment appeals rather than expecting the State Board of Equalization to do so.

Whenever the State Board of Equalization orders a change in assessment of an individual property, assessment of a particular class of property within a city or township, or a countywide change to a class of property, the County Auditor should notify the affected township or city assessors to correct the property records. The assessors will then have the correct current assessment to begin with for determining the next year’s assessments. 🌱

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## Listing of Payments in Lieu of Taxes

North Dakota Century Code ch. 40-57.1 provides that a municipality may grant a partial or complete exemption from property taxes on buildings, structures, fixtures, and improvements used in a qualifying project. In addition to, or instead of a property tax exemption, the municipality may establish payments in lieu of taxes on the improvements.

In the assessment book, for each parcel qualifying for exemption or payments in lieu of taxes, assessment officials should list the statute that authorizes exemption or payments in lieu of taxes. North Dakota Century Code § 57-02-14 provides for a separate assessment list to contain the description and valuation of property exempt from taxation. Property exempted according to N.D.C.C. ch. 40-57.1 is included on this list. When a project operator makes payments in addition to, or in lieu of property taxes, those payments need to be accounted for.

The Office of State Tax Commissioner recommends assessment officials keep a separate record of payments in lieu of taxes. The list should contain the legal

description of each property for which the payments are made, the amount of the payments and the period of time over which the payments are made. 🌱

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## Structures on Lots in Mobile Home Parks

In some mobile home courts/parks, owners of mobile homes are allowed to construct a garage or other outbuilding on the lot they rent. The buildings are assessed as real estate, to the owner of the land.

North Dakota Century Code § 57-02-34 requires assessment of taxable improvements and structures with the land on which they are located. For a mobile home located in a mobile home park within a city, the County Director of Tax Equalization assesses the mobile home to the owner of the mobile home. The City Assessor assesses the land and any taxable real property improvements, including a garage, located thereon to the owner of the land (generally the park owner).

We wonder if this situation is creating problems, or if it is satisfactory to mobile home owners, park owners, and assessment personnel. Please take a few minutes to respond to the following questions:

1. How do you assess freestanding buildings located on mobile home park lots?
  - a. As real property, with the land.
  - b. As additions to the mobile home.
2. Have mobile home owners or mobile home park owners complained?

3. How does the applicant receive homestead credit on the garage in the following situation?

A mobile home owner is eligible for the home owner's property tax credit on his mobile home. He is also eligible for the renter's property tax refund for the lot rent he pays. The garage located on his lot is part of his homestead (N.D.C.C. § 47-18-01) so he is eligible for homestead credit on the garage also. However, the garage is assessed with the land to the mobile home park owner.

4. Would you favor a legislative change? If so, what do you recommend?

Please e-mail your thoughts to Marcy Dickerson at [mdickerson@state.nd.us](mailto:mdickerson@state.nd.us). by November 12. Thanks for your input. 🌱

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## Land Easements Accounted For in Descriptions

North Dakota Century Code § 57-02-10 authorizes the Board of County Commissioners to exempt land upon which the owner granted an easement for construction of a highway, or inundated land upon which the owner granted an easement for water or wildlife conservation projects.

The land remains taxable to the fee owner until completion of the project. The area is declared exempt for the number of months remaining after completion of the project and every year thereafter until the project is no longer used as a highway or for water/wildlife conservation.

The easement area of highway projects includes both the road and the right-of-way on both sides. Following is an example of property description and valuation before and after completion of a road project.

<b>Before:</b>	NW¼ of Section 36; T-180N R-80W 30 ac.	\$20,000 T & F
<b>After:</b>	NW¼ of Section 36; T-180N R-80W less 1 ac. road easement 29 ac.	\$19,500 T & F
	1 ac. road easement, NW¼ Section 36; T-180N R-80W 1 ac.	exempt § 57-02-10

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## When to Refund Penalty And Interest

Delinquent taxes are subject to penalty and interest if not paid in a timely manner. North Dakota Century Code § 57-20-01 specifies January 1 as the date when real property taxes become due, and also specifies the dates when penalty and interest apply to delinquent taxes.

The provisions of N.D.C.C. § 57-23-04 authorize the Board of County Commissioners to abate all or part of an assessment or refund all or a part of a tax paid. Whenever the Board of County Commissioners approves an application for refund, the county auditor is authorized to refund the amount of tax approved by the commissioners. The statute is silent regarding refund of the penalty and interest that applies to the amount of tax to be refunded. Therefore, the County Auditor cannot refund any penalty or interest that applies to the amount of tax refunded.

North Dakota Century Code § 57-23-07 provides that whenever the real estate tax remains unpaid after the second Tuesday in December in the year it is due, the Board of County Commissioners (Board), subject to the Tax Commissioner's approval, may

compromise with the owner by abating a portion of the unpaid tax with the penalty and interest on that portion, provided the owner pays the remaining tax. The Board may compromise if the true and full value determined by the assessor for the year in question exceeds the value of the property or for other valid cause. This statute *specifically* allows for compromise of not only a portion of the tax but also the penalty and interest applicable to that portion of tax.

Mobile homes are taxed according to N.D.C.C. ch. 57-55. The Board of County Commissioners may abate, refund or compromise the mobile home tax if the facts establish that the assessment contains error, the mobile home value was excessive, or the mobile home is exempt according to N.D.C.C. § 57-55-10. The unjust portion of the mobile home tax and penalty paid is subject to refund. See N.D.C.C. § 57-55-12(1). ●

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## Assessment of Wind Turbine Electric Generators

A wind turbine electric generation unit with a nameplate capacity of 100 kilowatts or more is subject to assessment by the State Board of Equalization. The leased land on which the unit is located remains locally assessable to the landowner. The use of that land determines how it should be classified.

Property must be used for raising agricultural crops or grazing farm animals to be classified as agricultural property (N.D.C.C. § 57-02-01(1)). The amount of land leased for a wind generator site that is not available for raising crops or grazing animals should be classified as commercial land. However, if part of the leased land remains

available for raising crops or grazing animals, that part of the leased land is still agricultural land. For example: Two acres are leased as a site for a wind generator but only one-half acre is actually taken out of production. The one-half acre should be assessed as commercial property and the other one and one-half acres remain agricultural classification.

The Property Tax Division asks that you notify us of any wind generation units constructed in your jurisdiction. Please provide the location of each wind generation unit and name and address of the owner. Your cooperation will help make sure all assessable properties are assessed. ●

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## Open Records And Open Meetings

The performance of official duties by public servants is open to public scrutiny. North Dakota laws provide that all government records and meetings must be open to the public unless a specific statute requires or authorizes the closing of a meeting or record.

To avoid violations and to protect ourselves and the governmental entities for which we work, we must become knowledgeable of the open records and open meeting laws and the exceptions that apply.

Property records, maps, assessment lists, and minutes of meetings are examples of records open to the public. It is a violation of state open record laws to deny taxpayers access to those records. Basically, the only record pertaining to property taxation that is exempt from the open records laws is the statement of full consideration submitted to the State Board of

Equalization. Its confidentiality is provided for by N.D.C.C. § 11-18-02.2(7).

Regarding open meetings laws, the term “meeting” means *any* gathering of the members of a governing body of a public entity regarding public business. It includes informal gatherings or work sessions, committees, and discussions of public business by telephone. To properly hold a closed meeting, the public must be notified of an open meeting, the chairperson must announce not only the legal authority to close the meeting but also the topics to be discussed during the closed meeting. The governing body must vote on whether to close the meeting. Any executive meeting must be tape recorded for possible review by a court or the Office of Attorney General.

Anyone may ask the N.D. Attorney General for an advisory opinion regarding an alleged violation of the open records or open meetings laws. A governmental entity can be sued and public officials prosecuted criminally if they knowingly violate the open records and open meetings laws.

Governing boards, officials and their employees must be informed of the open records and open meeting laws. The website of the Office of Attorney General, [www.ag.state.nd.us](http://www.ag.state.nd.us), has information regarding open records and open meetings laws. Click on “Open Records & Meetings.” There are a number of documents available to print. The document labeled “Open Records & Open Meetings — Citizens” is a brochure in question/answer format that explains the laws and procedures pertaining to open records and open meetings. All governmental employees would benefit from reading it. In addition, a copy of the brochure should be available in every office.



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## Assessment Courses Scheduled

The Office of State Tax Commissioner has the following courses scheduled through May 2003:

Course 202	Agricultural Land Valuation	Nov. 18-22, 2002
Course 303	Teaching Appraisal Techniques	May 12-16, 2003

The following courses are tentatively scheduled through November, 2005:

Course 102	Principles & Theory of Value	Sept. 2003
Course 203-B	Commercial Cost Approach	May 2004
Course 101	Tax Administration	Nov. 2004
Course 202	Agricultural Land Valuation	May 2005
Course 303	Teaching Appraisal Techniques	Nov. 2005

The North Dakota Association of Assessing Officers may sponsor International Association of Assessing Officers (IAAO) Course 300 – Fundamentals of Mass Appraisal sometime in Oct. 2003. This course provide 30 hours of residential appraisal education for assessor certification. ●

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## Current E-mail Addresses Needed

In order to verify current e-mail addresses of county directors of tax equalization and class I city assessors, the Office of State Tax Commissioner asks those officials to e-mail their address to Judy Brosz before November 12, 2002, at [jbrosz@state.nd.us](mailto:jbrosz@state.nd.us).

A revised list will be available after that date. ●

### Need Assistance?

Please direct property tax questions or concerns to:

Office of State Tax Commissioner  
Property Tax Division  
Phone: (701)328-3127  
Toll free within ND: 1-800-638-2901, option 5  
Relay North Dakota 1-800-366-6888  
(for the speech and hearing impaired)  
Fax: (701)328-3700  
E-mail: [mdickerson@state.nd.us](mailto:mdickerson@state.nd.us)  
Website: [www.ndtaxdepartment.com](http://www.ndtaxdepartment.com)